

National Transportation Safety Board

§ 821.57

(c) *Computation of time.* Time shall be computed in accordance with § 821.10, including the provision that Saturdays, Sundays, and legal holidays of the Board shall always be counted in the computation.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59049, Nov. 15, 1994]

§ 821.55 Appeal, complaint, answer to the complaint, and motions.

(a) *Time within which to appeal.* The certificate holder may appeal within 10 days after the service of the Administrator's emergency or other immediately effective order. The certificate holder shall serve a copy of his appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action, and shall identify the issues of fact or law on which the appeal is based, and the relief sought. The appeal shall either attach a copy of the Administrator's order or shall clearly indicate that an emergency or other immediately effective order is being appealed.

(c) *Complaint.* Within 3 days after receipt of the appeal, the Administrator shall file with the Board an original and 3 copies of his emergency or other immediately effective order as his complaint, and serve a copy on the respondent.

(d) *Answer to the complaint.* Within 5 days after service of the complaint upon respondent, he shall file his answer thereto. Failure to deny any allegation or allegations of the complaint may be deemed an admission of the allegation or allegations not answered.

(e) *Motion to dismiss and motion for more definite statement.* No motion to dismiss or for a more definite statement shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(f) *Discovery.* Discovery is authorized in emergency or other immediately effective proceedings and, given the short time available, parties are di-

rected to cooperate to ensure timely completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in this subpart. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59049, Nov. 15, 1994]

§ 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Immediately upon notification by the Administrator to the Board, and in no case later than 5 days after receiving notice from the Administrator that an emergency exists or that safety in air commerce or air transportation requires the immediate effectiveness of an order, the Board shall set, and notify the parties of, the date and place for hearing. The hearing shall be set for a date no later than 25 days after service of the complaint. To the extent not inconsistent with this section, the provisions of § 821.37(a) also apply.

(b) *Initial decision.* The initial decision shall be made orally on the record at the termination of the hearing and after opportunity for oral argument. The provisions of § 821.42 (b) and (d) shall be applicable, (covering content, furnishing a copy of the initial decision excerpted from the record, and issuance date).

(c) *Conduct of hearing.* The provisions of §§ 821.38, 821.39, and 821.40, covering evidence, argument and submissions, and record, shall be applicable.

(d) *Effect of law judge's initial decision.* If no appeal to the Board by either party, by motion or otherwise, is filed within the time allowed, the law judge's initial decision shall become final but shall not be deemed to be a precedent binding on the Board.

[40 FR 30243, July 17, 1975, as amended at 59 FR 59050, Nov. 15, 1994]

§ 821.57 Procedure on appeal.

(a) *Time within which to file a notice of appeal and content.* Within 2 days after

the initial decision has been orally rendered, either party to the proceeding may appeal therefrom by filing with the Board and serving upon the other parties a notice of appeal. The time limitations for the filing of documents are not extended by the unavailability of the hearing transcript.

(b) *Briefs and oral argument.* Unless otherwise authorized by the Board, all briefs in emergency cases shall be served via overnight delivery or facsimile confirmed by first class mail. Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. Within 7 days after service of the appeal brief, a reply brief may be filed, with copies served (as provided above) on other parties. The briefs shall comply with the requirements of § 821.48 (b) through (g). Appeals may be dismissed by the Board on its own initiative or on motion of a party, notably in cases where a party fails to perfect the notice of appeal by filing a timely brief. When a request for oral argument is granted, the Board will give notice of such argument.

(c) *Issues on appeal.* The provisions of § 821.49 shall apply to issues on appeal. However, the Board may upon its own initiative raise any issue, the resolution of which it deems important to a proper disposition of the proceeding. If necessary or appropriate, the parties shall be afforded a reasonable opportunity to comment.

(d) *Petitions for reconsideration, rehearing, reargument, or modification of order.* The only petitions for reconsideration, rehearing, reargument, or modification of an order which the Board will entertain are petitions based on the ground that new matter has been discovered. Such petitions must set forth the following:

- (1) The new matter;
- (2) Affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and
- (3) A statement that such new matter could not have been discovered by the exercise of due diligence prior to the

date the case was submitted to the Board.

[40 FR 30243, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59050, Nov. 15, 1994]

Subpart J—Ex Parte Communications

AUTHORITY: Sec. 4, Government in the Sunshine Act, Pub. L. 94–409, amending 5 U.S.C. 556(d) and 5 U.S.C. 557; Title VI, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1421 et seq.; Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.).

SOURCE: 42 FR 21613, Apr. 28, 1977, unless otherwise noted.

§ 821.60 Definitions.

As used in this subpart:

Board decisional employee means a Board Member, administrative law judge, or other employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this part.

§ 821.61 Prohibited ex parte communications.

(a) The prohibitions of this section shall apply from the time a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of the acquisition of such knowledge.

(b) Except to the extent required for the disposition of ex parte matters as authorized by law:

(1) No interested person outside the Board shall make or knowingly cause to be made to any Board employee an ex parte communication relevant to the merits of the proceeding;

(2) No Board employee shall make or knowingly cause to be made to any interested person outside the Board an ex parte communication relevant to the merits of the proceeding.